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SUPREME COURT, U.S.

NO. 80-872

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1980

THE STATE OF ILLINOIS,

Petitioner,

vs.

JOHNNY LEE SAVORY,

Respondent.

MOTION TO PROCEED IN FORMA PAUPERIS

Respondent, Johnny Lee Savory, by his attorneys, Robert Agostinelli and Theodore A. Gottfried, Office of the State Appellate Defender, move this Court for leave to proceed in forma pauperis pursuant to United States Supreme Court Rule 53.

In support of this motion, an affidavit is attached.

Respectfully submitted,

Theodore A Gottfried

ROBERT AGOSTINELLI
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COUNSEL FOR RESPONDENT

ID/

NO. 80-872

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1980

THE STATE OF ILLINOIS,

Petitioner,

vs.

JOHNNY LEE SAVORY,

Respondent.

AFFIDAVIT

I, JOHNNY LEE SAVORY, being first sworn according to law, depose and say:

1. I am the Respondent in the above entitled cause;
2. My poverty renders me unable to pay the costs to proceed in this Court;
3. I am unable to give security for the same.
4. I have proceeded as an indigent person in all proceedings below.

X Johnny Lee Savory

Johnny Lee Savory
Respondent

Subscribed and sworn to before me this 4th day of December, 1980.

Notary Public

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THE STATE OF ILLINOIS,

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-vs-

JOHNNY LEE SAVORY,

Respondent.

NOTICE

TO:

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PLEASE TAKE NOTICE that on December 9th, 1980, I have mailed to the Clerk of the Supreme Court of the United States a copy of the attached Response in Opposition to Petition for Writ of Certiorari, and I am serving each of you with a copy by mail in envelopes with sufficient prepaid postage in the mail in Springfield, Illinois and addressed as indicated above on the 9th day of December, 1980.

Theodore A. Gottfried

THEODORE A. GOTTFRIED
State Appellate Defender

Counsel for Respondent.

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OCTOBER TERM, 1980

THE STATE OF ILLINOIS,

Petitioner,

-vs-

JOHNNY LEE SAVORY,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE
APPELLATE COURT OF ILLINOIS, THIRD DISTRICT.

RESPONSE IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

Whether the decision of the Illinois Appellate Court which is based on three separate grounds is consistent with the decisions of this Court.

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TABLE OF AUTHORITIES

Tague v. Louisiana, ____ U.S. ____, 62 L.Ed. 2d 622, 100 S.Ct. 652 (1980);

North Carolina v. Butler (1979) 441 U.S. 360, 60 L.Ed. 2d 286, 99 S.Ct. 1755;

Michigan v. Mosley, 423 U.S. 96, 96 S.Ct. 321, 46 L. Ed. 2d 313 (1975);

Haley v. Ohio (1948) 32 U.S. 596, 92 L.Ed. 244, 68 S.Ct. 301;

Bond v. United States (10th Cir. 1968) 397 F.2d 162;

United States v. Hayes (4th Cir. 1967) 387 F.2d 162.

NO. 80 - 872

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1980

THE STATE OF ILLINOIS,

Petitioner,

-vs-

JOHNNY LEE SAVORY,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE
APPELLATE COURT OF ILLINOIS, THIRD DISTRICT.

RESPONSE IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

OPINION BELOW

The opinion of the Appellate Court, Third District of Illinois is reported as People v. Savory, 82 Ill. App. 3d 767 (Ill. 1980) and is reprinted in Appendix A (pp. 1a-21a) to the Petition for Certiorari.

JURISDICTION

The opinion of the Illinois Appellate Court, Third Judicial District was filed on April 4, 1980. The order of the Illinois Supreme Court denying the petition for leave to appeal was entered on September 29, 1980.

CONSTITUTIONAL PROVISIONS INVOLVED

The Respondent agrees with the denotation of constitutional provisions appearing in the Petition for Certiorari (the Fifth and Fourteenth Amendments to the Constitution of the United States).

STATEMENT OF FACTS

The bodies of the two victims were discovered on January 18, 1977 by the victims' stepfather, William Douglas, in the bedroom of their residence. (R.392) Both had sustained multiple stab wounds. The police were notified and this set into motion a large scale investigation. Many witnesses and suspects were interviewed and several were even given lie detector tests. (R.176, 177)

Johnny Lee Savory, the fourteen-year old defendant, was questioned by police officers beginning at 3:30 P.M. on January 25, 1977 in regard to the deaths of Connie Cooper and James Robinson. This interrogation began at the Late Afternoon School where the defendant was a student. (R.44) At the outset of the interrogation, the defendant stated he did not want to talk. (R.45) However, the police convinced him to talk. The defendant was not given any Miranda warnings at that time. (R.78) At that time, the defendant gave police an account of his activities of the day prior to the murder. (R.45-50)

At 5:00 P.M., defendant was brought into an interrogation room at the police station and repeated his previous story before four officers. (R.58) This session lasted about one-half hour. (R.60) Later that evening, the defendant was again interrogated,

this time with specific emphasis concerning certain factual discrepancies between some of the known facts and defendant's earlier statement. (R.64) This session lasted one-half hour to forty-five minutes. (R.64)

Although he made no incriminatory statements up to this point in time, defendant was taken to a polygraph examiner at 10:00 P.M. (R.101) The defendant was accompanied by two police officers and his probation officer. (R.102) The defendant was alone with the polygraph examiner for about an hour--until 11:00 P.M. (R.104) At the end of the polygraph examination, the results of which were made known to Officer Cannon, the defendant was placed under arrest and read his Miranda rights. (R.106-107) The defendant, in response, stated that he did not want to talk. (R.121) At about 11:00 P.M., defendant was returned to the police station and later taken to the detention home for the night. (R.109, 110)

The following morning, January 26, 1978, the defendant was not taken to juvenile court but was returned to the police station for further interrogation. The re-interrogation began at approximately 10:30 A.M. at the police station with Percy Baker and Y.T. Savory, defendant's father, present. (R.138) Officer Hines, who did not testify at the suppression hearing, read defendant his Miranda rights. (R.138) During the ensuing interrogation, defendant was confronted with several discrepancies at which time defendant would change his story. (R.141) However, defendant still denied committing the murder. (R.141) This session ended around Noon whereupon defendant was fed.

At 12:30 P.M., defendant was again interrogated in a short session. At that time, defendant stated he would tell everything to Officer Brown. (R.144) Officer Brown then began a session with

the defendant that lasted until 5:00 P.M. (R.147) Although defendant gave a detailed statement of his activities, he still made no incriminatory statements. (R.146) At the close of this session, defendant was forced to change clothes. (R.147)

At approximately 6:00 P.M., defendant again took a polygraph examination. (R.181) This session, with just the defendant and the examiner present, lasted about an hour and a half. (R.188) At the end of the examination, Officer Brown entered the examination room and the defendant then made incriminating statements. (R.188) Defendant indicated to Officer Brown the location of some of the stab wounds. (R.183) Defendant told Brown that he and Robinson were practicing Kung Fu and that Robinson wanted defendant to use the knife. (R.820) Defendant stated that he accidentally stuck Robinson. (R.820) Defendant said his mind went blank and when Cooper came into the room, she came at him and he cut her. (R.818)

Defendant then returned to the police station where he denied any involvement to Percy Baker, his probation officer. (R.204) Officer Brown told the defendant that this was "backtracking" and began to question defendant for details of the murder. (R.204) In answer to questions from Officer Brown, defendant said that Robinson had been wearing dark trousers. (R.191) He also told Officer Brown that he had left a bottle of fingernail polish at the Robinson residence. (R.191) Finally, he stated that he had used the knife that the police had in their possession. (R.192) Defendant's confession was in error, however, as to the room in which victim James Robinson was stabbed and as to the color of the victim Cooper's nightgown. (R.206, 207)

Defendant filed a written motion to suppress the confession (C.112) which was denied after a full hearing. (C.409) The confession and earlier statements were heard as evidence at trial.

The rest of the State's evidence consisted primarily of a discussion of various pieces of physical evidence that was obtained at the Robinson-Cooper residence. The physical evidence related the nature of the victim's wounds, the physical setup of their home and did tend to show defendant had at some time been at the Cooper-Robinson residence. No eye-witnesses testified at trial.

On appeal, the defendant argued 1) there was no oral or written waiver of Miranda rights; 2) The statement was not voluntary; and 3) The defendant's right to cut off questioning was not scrupulously honored.

The Appellate Court agreed with all three of the defendant's claims and reversed and remanded the case for a new trial. The Illinois Supreme Court then denied the state's petition for leave to appeal.

REASON WHY THE WRIT SHOULD NOT BE GRANTED

The Respondent argues the following reason why the writ of certiorari should not be granted:

> The decision of the Illinois Appellate Court is based on three separate grounds which are consistent with the decisions of this Court.

Because the defendant in this case was a 14-year old boy, the Appellate Court used special care in scrutinizing the record to determine the voluntariness of the statement. Citing this Court's opinion in Haley v. Ohio (1948), 332 U.S. 596, 92

L.Ed. 224, 68 S.Ct. 301, the Court stated that

> "the test to be applied in determining the voluntariness of a statement is whether it has been made freely, voluntarily and without compulsion or inducement of any sort or whether the defendant's will has overcome at the time he confessed."

In deciding that the defendant's statement was not proved to be voluntary, the court was influenced by the following factors:

1. The defendant was 14 years old. (App. Ct. opinion)

2. The defendant was interrogated for 17 hours during two days of questioning and twice examined by a polygraph examiner. (App. Ct. opinion)

3. When the police initially approached the defendant at school, he indicated he did not wish to talk to them. (R.45)

4. When Miranda warnings were given for the first time eight hours after questioning began, the defendant exercised his right to remain silent. (R.121)

5. After spending the night in a juvenile detention center, the defendant was brought to the police station for further questioning. (R.138)

6. The defendant made no explicit oral or written waiver of his Miranda rights. (App. Ct. opinion)

7. After making an inculpatory statement, the defendant denied any involvement to his probation officer. (R.240)

The court held:

> "Without deciding that the length of questioning would of itself justify suppression of the statements as not voluntary, we believe the cumulative effect of all the circumstances does compel the conclusion the prosecution did not sustain its burden of establishing the voluntariness of the statements."

There is nothing in the court's analysis of the voluntariness issue which is inconsistent with the decisions of this court.

The defendant also argued that the record was void of sufficient evidence to a knowing and voluntary waiver of his Miranda rights. The Appellate Court recognized that no particular form of waiver is required. United States v. Hayes, (4th Cir. 1967) 387 F.2d 375; Bond v. United States, (10th Cir. 1968) 397 F.2d 162; North Carolina v. Butler (1979) 441 U.S. 369, 60 L.Ed. 2d 286, 99 S.Ct. 1755. But recognized that waiver will not be implied either from a silent record or from the fact that the defendant may have made statements. Tague v. Louisiana, _____ U.S. _____, 62 L.Ed. 2d 622, 100 S.Ct. 652 (1980). The court held that under the circumstances of this case, the state failed to show a knowing and intelligent waiver of the defendant's Miranda rights.

Finally, the defendant argued that the defendant's right to cut off questioning was not scrupulously honored by the police. It is the court's ruling in this regard that the petitioner takes greatest exception to. The petitioner claims that the appellate court expands the requirement placed on reinterrogation established in Michigan v. Mosley, 423 U.S. 96, 96 S.Ct. 321, 46 L.Ed. 2d 313 (1975). The petitioner agrees with the Illinois Appellate Court's holding that reinterrogation need not be about an offense other than the one for which the defendant was taken into custody, but may concern the same offense. But the petitioner disagrees that under the circumstances of this case, they should have shown a reason why this boy was brought from the detention center for further questioning when he had indicated he did not want to talk. Rather than expand upon the ruling in Mosley, the court merely applied the rationale of Mosley to the circumstances of this case.

The decision of the Illinois Appellate Court is not in conflict with federal cases or those from other state jurisdictions and Respondent urges this court to deny petitioner's request for the issuance of a writ of certiorari.

CONCLUSION

For the reasons stated, the petition for writ of certiorari should not be granted.

Respectfully submitted,

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